



Reprinted  
April 12, 2001

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## ENGROSSED SENATE BILL No. 317

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DIGEST OF SB 317 (Updated April 11, 2001 4:31 PM - DI 103)

**Citations Affected:** IC 8-1; IC 13-18; noncode.

**Synopsis:** Regulatory flexibility committee. Provides that when a customer of a public or municipally owned electric utility installs or upgrades electric service, the utility must supply the customer with a meter base if the meter base: (1) is necessary for the installation or upgrade; and (2) has not already been supplied by the customer. Prohibits a utility from requiring a customer, or a contractor or subcontractor hired by the customer, to obtain a meter from an outside supplier or vendor. Provides that, except in the case of rural electric membership corporations and certain nonprofit corporations, the following transactions require approval by the Indiana utility regulatory commission (IURC) after a hearing: (1) The reorganization of a public utility. (2) A transaction in which a public utility acquires control of a public utility, an out-of-state utility company, or a holding company.  
(Continued next page)

**Effective:** Upon passage; July 1, 2001.

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### Weatherwax

(HOUSE SPONSORS — FRY, MCCLAIN)

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January 16, 2001, read first time and referred to Committee on Rules and Legislative Procedure.

January 30, 2001, reported favorably — Do Pass.

February 5, 2001, read second time, ordered engrossed.

February 6, 2001, engrossed. Read third time, passed. Yeas 49, nays 0.

#### HOUSE ACTION

February 26, 2001, read first time and referred to Committee on Rules and Legislative Procedures.

April 9, 2001, amended, reported — Do Pass.

April 11, 2001, read second time, amended, ordered engrossed.

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(3) A transaction in which a person acquires control of a public utility or the holding company of a public utility. (4) A transaction in which a holding company that controls at least one public utility acquires control of an out-of-state utility company. Requires that the commissioner issue an order within 150 days after a petition is filed. Requires the speaker of the house, after selecting the standing committee of the house whose members will be members of the regulatory flexibility committee, to select a member of the standing committee or a member of the house of representatives who is not a member of the standing committee to be co-chair of the regulatory flexibility committee. Requires the president pro tempore of the senate, after selecting the standing committee of the senate whose members will be members of the regulatory flexibility committee, to select a member of the standing committee or a member of the senate who is not a member of the standing committee to be co-chair of the regulatory flexibility committee. Specifies that gas utility issues are part of the jurisdiction of the regulatory flexibility committee. Defines the term "merchant power plant". Establishes the criteria the IURC must consider when considering a merchant power plant application, including preferred siting locations. Lists the duties of the merchant power plant following approval by the IURC. Establishes the utility worker skills and standards committee. Provides that the committee consists of the following members: (1) The utility consumer counselor, who serves as chair and an ex officio, non voting member. (2) Five members appointed by the governor and representing different types of electric utilities. (3) Five members appointed by the governor and representing various employee organizations. Requires the committee to adopt rules establishing skill and training standards for employees who operate or maintain electric utilities. Requires any proposed standards or qualifications to be approved by a simple majority of the voting committee members. Provides that any proposed standards or qualifications not agreed to by a simple majority of committee members shall be submitted to the chair for a final decision. Prohibits the chair from creating any new standards or approving any standards not proposed by the voting members. Requires the committee to meet at least annually to review of the effectiveness of the rules and consider whether any additions or amendments to the rules are necessary. Requires the committee to adopt the initial set of rules not later than January 1, 2003. Provides that the IURC may decline to exercise jurisdiction over a facility that has applied to the IURC before March 1, 2001. Specifies that the IURC has jurisdiction over a merchant power plant that has made a significant alteration in the labor used to construct or remodel the facility. Requires a merchant power plant to provide proof of financial responsibility. Sets various deadlines following the filing of a petition by a merchant power plant. Requires the IURC to hold a hearing before issuing a certificate of public convenience and necessity to a merchant power plant. Requires the IURC to obtain a recommendation from the department of natural resources before approving a merchant power plant. Provides that a lift station that is part of a sanitary sewer system may not be built within 1,000 feet of certain bodies of water.

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Reprinted  
April 12, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## ENGROSSED SENATE BILL No. 317

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A BILL FOR AN ACT to amend the Indiana Code concerning the general assembly.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 8-1-2-36.2 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2001]: **Sec. 36.2. (a) As used in this section, "meter base" refers**  
4 **to the unit to which:**

5 (1) **a meter; or**

6 (2) **another device used to measure electricity supplied by a**  
7 **utility;**

8 **is attached at the time the meter or device is installed.**

9 (b) **As used in this section, "utility" refers to a public or**  
10 **municipally owned electric utility. The term includes a corporation**  
11 **formed under IC 8-1-13 to make electric energy available to**  
12 **inhabitants of rural areas of Indiana.**

13 (c) **When a new customer of a utility installs electric service, or**  
14 **an existing customer of the utility upgrades the customer's electric**  
15 **service, the utility must supply the customer with a meter base if**  
16 **the meter base:**

17 (1) **is necessary for the installation or upgrade; and**

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(2) has not already been supplied by the customer.  
 A utility may not require a customer, or a contractor or subcontractor hired by the customer, to purchase or otherwise acquire a meter base from an outside supplier or vendor.

SECTION 2. IC 8-1-2-83 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 83. (a) ~~No~~ This section does not apply to:

- (1) a corporation organized or operating under IC 8-1-13; or
- (2) A corporation organized under IC 23-17, some of the members of which are local district corporations (as defined in IC 8-1-13-23).

(b) As used in this section, "control" means the power to direct the management and policies of a public utility, utility company, or holding company through:

- (1) the ownership of voting securities or stock;
- (2) the terms of a contract; or
- (3) other means.

The term does not include power from holding an official position or corporate office with the public utility, utility company, or holding company. Control is presumed to exist if a person, directly or indirectly, owns, controls, has the power to vote, or has the power to vote proxies that constitute at least twenty percent (20%) of the total voting power of the public utility, utility company, or holding company.

(c) As used in this section, unless otherwise indicated, "holding company" means a company that has control over one (1) or more:

- (1) public utilities; or
- (2) utility companies.

(d) As used in this section, "person" means an individual, a firm, a corporation, a company, a partnership, a limited liability company, an association, a trustee, a lessee, or a receiver.

(e) As used in this section, "reorganization" means a transaction that, regardless of the means by which it is accomplished, results in:

- (1) a change in the ownership of a majority of the voting capital stock of a public utility;
- (2) a change in the ownership or control of an entity that owns or controls a majority of the voting capital stock of a public utility;
- (3) the merger of two (2) public utilities; or
- (4) the acquisition by one (1) public utility of substantially all assets of another public utility.



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(f) As used in this section, "utility company" has the same meaning as the definition of public utility under section 1 of this chapter, except that a utility company owns, operates, manages, or controls a plant or equipment located outside Indiana.

(g) A public utility, as defined in section 1 of this chapter, ~~shall~~ **may not do any of the following without the approval of the commission after hearing:**

(1) Sell, assign, transfer, lease, or encumber its **stock**, franchise, works, or system to any other person, partnership, limited liability company, or corporation. ~~or~~

(2) Contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation. ~~without the approval of the commission after hearing.~~  
~~And no such~~

(3) Contract for or effect a reorganization of the public utility.

(4) Acquire control, directly or indirectly, of a public utility, utility company, or holding company.

(h) A person may not acquire control, directly or indirectly, of a public utility or the holding company of a public utility without the approval of the commission after a hearing.

(i) A holding company that controls at least one (1) public utility may not acquire control of a utility company without the approval of the commission after a hearing.

(j) A public utility, except temporarily or in case of emergency and for a period of not exceeding thirty (30) days, ~~shall~~ **may not** make any special contract at rates other than those prescribed in its schedule of rates theretofore filed with the commission, and in force, with any other utility for rendering any service to or procuring any service from such other utility; without the approval of the commission. It shall be lawful, however, for any utility to make a contract for service to or from another utility at rates previously filed with and approved by the commission and in force.

~~(b)~~ **(k)** The approval of the commission of the sale, assignment, transfer, lease, or encumbrance of a franchise or any part thereof under this section shall not revive or validate any lapsed or invalid franchise, or enlarge or add to the powers and privileges contained in the grant of any franchise or waive any forfeiture. No such public utility shall directly or indirectly purchase, acquire, or become the owner of any of the property, stock, or bonds of any other public utility authorized to engage or engaged in the same or a similar business, or operating or purporting to operate under a franchise from the same or any other municipality or under an indeterminate permit unless authorized so to



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do by the commission.

**(l) The commission shall issue an order within one hundred fifty (150) days after a petition seeking approval under this section is filed. If the commission fails to issue an order within one hundred fifty (150) days after the petition is filed, the petition is considered approved.**

**(m)** Nothing contained in this section shall prevent the holding of stock lawfully acquired before May 1, 1913, or prohibit, upon the surrender or exchange of said stock pursuant to a reorganization plan, the purchase, acquisition, taking, or holding by the owner of a proportionate amount of the stock of any new corporation organized to take over at foreclosure or other sale, the property of the corporation whose stock has been thus surrendered or exchanged.

**(n)** Every contract by any public utility for the purchase, acquisition, assignment, or transfer to it of any of the stock of any other public utility by or through any person, partnership, limited liability company, or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such stock upon the books of the corporation pursuant to any such contract shall be effective for any purpose.

SECTION 3. IC 8-1-2.5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) A regulatory flexibility committee established under IC 8-1-2.6-4 to monitor changes in the telephone industry shall also serve to monitor changes and competition in the energy utility industry.

(b) The commission shall ~~before August 15, 1997, and~~ before August 15 of each year ~~after 1997~~, prepare for presentation to the regulatory flexibility committee an analysis of the effects of competition or changes in the energy utility industry on service and on the pricing of all energy utility services under the jurisdiction of the commission.

(c) In addition to reviewing the commission report prepared under subsection (b), the regulatory flexibility committee shall also issue a report and recommendations to the legislative council before November 1 ~~1997, and before November 1~~ of each year ~~after 1997~~ that are based on a review of the following issues:

(1) The effects of competition or changes in the energy utility industry and the impact of the competition or changes on the residential rates.

(2) The status of modernization of the energy utility facilities in Indiana and the incentives required to further enhance this infrastructure.



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(3) The effects on economic development of this modernization.

(4) The traditional method of regulating energy utilities and the method's effectiveness.

(5) The economic and social effectiveness of traditional energy utility service pricing.

(6) The effects of legislation enacted by the United States Congress.

(7) All other energy utility issues, **including gas utility issues**, the committee considers appropriate; ~~provided~~, however, it is not the intent of this section to provide for the review of the statutes cited in section 11 of this chapter.

(d) This section:

(1) does not give a party to a collective bargaining agreement any greater rights under the agreement than the party had before January 1, 1995;

(2) does not give the committee the authority to order a party to a collective bargaining agreement to cancel, terminate, amend or otherwise modify the collective bargaining agreement; and

(3) may not be implemented by the committee in a way that would give a party to a collective bargaining agreement any greater rights under the agreement than the party had before January 1, 1995.

(e) The regulatory flexibility committee shall meet on the call of the co-chairs to study energy utility issues described in subsection (c). The committee shall, with the approval of the commission, retain independent consultants the committee considers appropriate to assist the committee in the review and study. The expenses for the consultants shall be paid with funds from the public utility fees assessed under IC 8-1-6.

(f) The legislative services agency shall provide staff support to the committee.

(g) Each member of the committee is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative members of interim study committees established by the legislative council.

SECTION 4. IC 8-1-2.6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A regulatory flexibility committee is established to monitor competition in the telephone industry.

(b) The committee is composed of the **following**:

**(1) The members of the a house commerce standing committee and the selected by the speaker of the house of representatives.**

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(2) The members of a senate ~~commerce~~ standing committee selected by the president pro tempore of the senate.

(3) An additional member of the house of representatives, if selected by the speaker under subsection (d)(2) to be co-chair of the regulatory flexibility committee.

(4) An additional member of the senate, if selected by the president pro tempore under subsection (e)(2) to be co-chair of the regulatory flexibility committee.

(c) In selecting standing committees under this subsection, the speaker and president pro tempore shall determine which standing committee of the house of representatives and the senate, respectively, has subject matter jurisdiction that most closely relates to the electricity, gas, energy policy, and telecommunications jurisdiction of the regulatory flexibility committee.

(d) The ~~chairman of each of those committees~~ speaker of the house of representatives shall appoint:

(1) a member of the standing committee selected by the speaker under subsection (b); or

(2) a member of the house of representatives who is not a member of the standing committee selected by the speaker under subsection (b);

to be co-chair of the regulatory flexibility committee.

(e) The president pro tempore of the senate shall appoint:

(1) a member of the standing committee selected by the president pro tempore under subsection (b); or

(2) a member of the senate who is not a member of the standing committee selected by the president pro tempore under subsection (b);

to be co-chair of the regulatory flexibility committee.

~~(c)~~ (f) The commission shall by July 1 ~~1993~~, and of each year thereafter, prepare for presentation to the regulatory flexibility committee an analysis of the effects of competition on universal service and on pricing of all telephone services under the jurisdiction of the commission.

~~(d)~~ (g) In addition to reviewing the commission report prepared under subsection ~~(c)~~, (f), the regulatory flexibility committee shall also issue a report and recommendations to the legislative council by November 1 ~~1993~~, and of each year. ~~thereafter that is~~ **The report and review must be** based on a review of the following issues:

(1) The effects of competition in the telephone industry and impact of competition on available subsidies used to maintain

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universal service.

(2) The status of modernization of the public telephone network in Indiana and the incentives required to further enhance this infrastructure.

(3) The effects on economic development and educational opportunities of this modernization.

(4) The current method of regulating telephone companies and the method's effectiveness.

(5) The economic and social effectiveness of current telephone service pricing.

(6) All other telecommunications issues the committee deems appropriate.

~~(e)~~ **(h)** The regulatory flexibility committee shall meet on the call of the co-chairmen to study telecommunications issues described in subsection ~~(d)~~ **(g)**. The committee shall, with the approval of the commission, retain the independent consultants the committee considers appropriate to assist the committee in the review and study. The expenses for the consultants shall be paid by the commission.

SECTION 5. IC 8-1-8.3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

**Chapter 8.3. Utility Worker Skills and Standards Committee**

**Sec. 1. As used in this chapter, "committee" refers to the utility worker skills and standards committee established by section 3 of this chapter.**

**Sec. 2. As used in this chapter, "utility" means a plant or equipment within Indiana that is used for the production, transmission, delivery, or furnishing of electricity, either directly or indirectly, to the public.**

**Sec. 3. There is established the utility worker skills and standards committee consisting of the following eleven (11) members:**

**(1) The utility consumer counselor, who is an ex officio member of the committee. Except as provided in section 5 of this chapter, the utility consumer counselor is a nonvoting member of the committee. The utility consumer counselor shall serve as chair of the committee.**

**(2) Five (5) members appointed by the governor, with one (1) member representing each of the following:**

**(A) A public utility (as defined in IC 8-1-2-1) that produces, transmits, delivers, or furnishes electricity, either directly or indirectly, to the public.**

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(B) A rural electric membership corporation formed under IC 8-1-13.

(C) A municipally owned utility (as defined in IC 8-1-2-1) that produces, transmits, delivers, or furnishes electricity, either directly or indirectly, to the public.

(D) A public utility described in clause (A) that has withdrawn from the commission's jurisdiction under any provision of Indiana law, or over which the commission has declined to exercise jurisdiction under any provision of Indiana law.

(E) A nonutility owned electric generation and transmission company.

(3) Five (5) members appointed by the governor, with one (1) member representing each of the following employee organizations:

(A) The Indiana State AFL-CIO.

(B) The Indiana State Building Trades Council.

(C) The International Brotherhood of Electrical Workers.

(D) The American Federation of State, County, and Municipal Employees.

(E) The United Steelworkers of America.

Sec. 4. (a) A member appointed under section 3(2) or 3(3) of this chapter serves for a term of four (4) years, except when a member is appointed to fill a vacancy, in which case the appointment is for the unexpired term only. A member appointed under section 3(2) or 3(3) of this chapter serves until the member's successor is appointed and qualified. However, a member appointed under section 3(2) or 3(3) of this chapter may be reappointed to successive terms. The utility consumer counselor serves on the committee for the duration of the counselor's appointment under IC 8-1-1.1-3.

(b) A member appointed under section (3)(2) or 3(3) of this chapter may be removed at any time by the governor for cause.

(c) Six (6) members of the committee constitute a quorum.

(d) The chair shall call the number of meetings necessary for the committee to adopt the initial rules required under section 5 of this chapter. After the committee adopts the initial rules required under section 5 of this chapter, the committee shall meet at least one (1) time each calendar year to review the effectiveness of the rules and consider whether any additions or amendments to the rules are needed. Upon the call of the chair or a simple majority of the members of the committee, the committee shall hold any



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1 additional meetings necessary to amend the rules.

2       **Sec. 5.** The committee shall adopt rules under IC 4-22-2 to  
3 establish skill and training standards for employees who operate  
4 or maintain utilities. The rules adopted must specify training  
5 standards and qualifications for utility employees who operate,  
6 maintain, service, and repair any or all parts of electric generation  
7 and transmission facilities, materials, or equipment. All standards  
8 and qualifications must be approved by a vote of a simple majority  
9 of the voting members of the committee. Any proposed standards  
10 or qualifications not agreed to by a simple majority of the voting  
11 members of the committee must be submitted to the utility  
12 consumer counselor, who, as chair of the committee, shall make a  
13 final determination concerning the proposed standards or  
14 qualifications. The chair shall either approve or deny the proposed  
15 standards or qualifications based on:

16       (1) information submitted by committee members appointed  
17 under section 3(2) of this chapter; or

18       (2) information submitted by committee members appointed  
19 under section 3(3) of this chapter;

20 or on information submitted by a combination of committee  
21 members appointed under section 3(2) and 3(3) of this chapter.  
22 However, the chair may not create any new standards or  
23 qualifications or approve any standards or qualifications that were  
24 not proposed by members appointed under section 3(2) or 3(3) of  
25 this chapter.

26       SECTION 6. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS  
27 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON  
28 PASSAGE]:

29       **Chapter 8.4. Merchant Power Plants**

30       **Sec. 1.** This chapter does not apply to a merchant power plant  
31 that has filed a petition with the commission under IC 8-1-2.5  
32 before March 1, 2001, seeking an order that the commission  
33 decline to exercise, in whole or in part, its jurisdiction over the  
34 merchant power plant.

35       **Sec. 2. (a)** "Merchant power plant" means a facility within  
36 Indiana used for the:

37       (1) production, transmission, delivery, or furnishing of heat,  
38 light, or power; and

39       (2) sale of electric energy exclusively on the wholesale market;  
40 to other public utilities, energy service providers, or power  
41 marketers within or outside Indiana.

42       (b) The term includes a facility that has made a significant



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1 alteration to the labor used to construct or remodel the facility. For  
 2 purposes of this subsection, a facility makes a significant alteration  
 3 in the labor used to construct or remodel a facility if the person  
 4 uses contractors, subcontractors, or work crews that include  
 5 workers who are not participants in or have not completed a  
 6 jointly administered labor and management apprenticeship  
 7 program approved by the United States Department of Labor's  
 8 Bureau of Apprenticeship Training.

9 (c) The term does not include a facility that is owned, controlled,  
 10 or operated by a person that is obligated contractually to provide  
 11 substantially all of the wholesale power requirements of an  
 12 electricity supplier under a contract extending at least five (5)  
 13 years.

14 Sec. 3. Except as provided in section 1 of this chapter, a  
 15 merchant power plant is subject to the jurisdiction of the  
 16 commission.

17 Sec. 4. The commission shall consider the following when acting  
 18 upon any petition by a merchant power plant under IC 8-1-8.5 or  
 19 IC 8-1-2.5:

- 20 (1) Location.
- 21 (2) Need.
- 22 (3) Financing.
- 23 (4) Reporting requirements.
- 24 (5) Impact on electric, water, and natural gas suppliers and
- 25 customers.
- 26 (6) The recommendation of the department of natural
- 27 resources under section 5 of this chapter.

28 (b) The commission shall issue a decision either approving or  
 29 denying a merchant power plant's petition under IC 8-1-2.5 or  
 30 IC 8-1-8.5 not later than eighteen (18) months after the date of the  
 31 petition.

32 Sec. 5. (a) When petitioning the commission under IC 8-1-2.5 or  
 33 IC 8-1-8.5, a merchant power plant must establish proof of  
 34 financial responsibility by filing one (1) or a combination of the  
 35 following with the commission:

- 36 (1) A fully funded trust fund agreement.
- 37 (2) A surety bond with a standby trust fund agreement.
- 38 (3) A letter of credit with a standby trust fund agreement.
- 39 (4) An insurance policy with a standby trust fund agreement.
- 40 (5) Proof that the merchant power plant meets a financial test
- 41 established by the commission and equivalent to one (1) of the
- 42 items in subdivisions (1) through (4).



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1       (b) The amount of financial responsibility that a merchant  
2 power plant must establish under this section shall be determined  
3 by the commission. In all cases, the amount must be sufficient to  
4 close the merchant power plant in a manner that:

- 5       (1) minimizes the need for further maintenance and  
6 remediation; and  
7       (2) provides reasonable, foreseeable, and necessary  
8 maintenance and remediation after closure for at least twenty  
9 (20) years after the merchant power plant ceases operations.

10       (c) The commission may use:

- 11       (1) a trust fund agreement;  
12       (2) a surety bond;  
13       (3) a letter of credit;  
14       (4) an insurance policy; or  
15       (5) other proof of financial responsibility;

16 filed under this section for the closure or post-closure monitoring,  
17 maintenance, or remediation of a merchant power plant approved  
18 by the commission, if the merchant power plant does not comply  
19 with closure or post-closure standards established by the  
20 commission under subsection (d).

21       (d) The commission shall adopt rules under IC 4-22-2 to  
22 establish the following:

- 23       (1) Standards for the proper closure and post-closure  
24 monitoring, maintenance, and remediation of merchant power  
25 plants.  
26       (2) Criteria for how money in a trust fund agreement, a surety  
27 bond, a letter of credit, an insurance policy, or other proof of  
28 financial responsibility provided by a merchant power plant  
29 may be released to the merchant power plant when the  
30 merchant power plant meets the closure and post-closure  
31 standards established under subdivision (1).

32       Sec. 6. (a) Not later than seven (7) days after filing a petition  
33 under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall:

- 34       (1) send notice of the petition, including a description of the  
35 facility or proposed facility, by United States mail to all  
36 record owners of real property located within one (1) mile of  
37 the proposed facility; and  
38       (2) cause notice of the petition, including a description of the  
39 facility or proposed facility, to be published in a newspaper of  
40 general circulation in each county in which the facility or  
41 proposed facility is or will be located.

42       (b) The notice of the petition shall include:

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- (1) a description of the facility or proposed facility; and
- (2) the location, date, and time of the field hearing required by section 7 of this chapter.

Sec. 7. Not later than thirty (30) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall conduct a field hearing at a location in a county in which the facility or proposed facility is or will be located. The purpose of the field hearing is to determine local support for the merchant power plant.

Sec. 8. Not later than thirty (30) days after the field hearing required by section 7 of this chapter, a majority of the persons described in section 4(a)(1) of this chapter may request in writing a hearing before the commission.

Sec. 9. (a) Not later than thirty (30) days after a hearing is requested under section 8 of this chapter, the commission shall conduct a hearing at a location in a county in which the facility or proposed facility is or will be located. The hearing required by this subsection must be held:

- (1) before or at the same time as the hearing required under IC 8-1-8.5-5(b); and
- (2) before the commission issues a certificate of public convenience and necessity under IC 8-1-8.5.

(b) At least ten (10) days before the scheduled hearing, notice of the hearing must be served by first class mail on:

- (1) all record owners of property located within one-half (1/2) mile of the proposed facility; and
- (2) the merchant power plant.

(c) The parties to the hearing include:

- (1) a person entitled to notice under section 9(b)(1) of this chapter; and
- (2) the merchant power plant.

(d) The commission shall accept written or oral testimony from any person who appears at the public hearing, but the right to call and examine witnesses is reserved for the parties to the hearing.

(e) The commission shall make a record of the hearing and all testimony received. The commission shall make the record available for public inspection.

Sec. 10. Not later than forty-five (45) days after a hearing is conducted under section 9 of this chapter, the commission shall issue written findings based on the testimony presented at the hearing. To the extent the commission's findings differ from testimony presented at the hearing, the commission must explain

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1 its findings.

2 Sec. 11. When considering whether to approve a merchant  
3 power plant, the commission shall give preference to the following  
4 locations for siting:

- 5 (1) Brownfield sites that are isolated from populated areas.
- 6 (2) Sites of existing or former utilities that can be replaced or  
7 repowered.
- 8 (3) Other sites identified for power plant or heavy industrial  
9 development in local land use plans before the initiation of site  
10 selection for the facility.

11 Sec. 12. (a) For purposes of this section:

- 12 (1) "department" refers to the department of natural  
13 resources; and
- 14 (2) "water resource" has the meaning set forth in  
15 IC 14-25-7-8.

16 (b) When considering whether to approve a merchant power  
17 plant, the commission shall obtain a recommendation from the  
18 department regarding the merchant power plant's planned use of  
19 and its potential effect on the water resource.

20 (c) To make its recommendation, the department may do the  
21 following:

- 22 (1) Rely on the merchant power plant's water resource  
23 assessment under subsection (d).
- 24 (2) Consult with and advise users of the water resource.
- 25 (3) Enter upon any land or water in Indiana to evaluate the  
26 effect of the merchant power plant on the water resource.
- 27 (4) Conduct studies to evaluate the availability and most  
28 practical method of withdrawal, development, conservation,  
29 and use of the water resource.
- 30 (5) Require metering or other reasonable measuring of water  
31 withdrawals and reporting of the measurement to the  
32 department.
- 33 (6) Engage in any other activity necessary to carry out the  
34 purposes of this section.

35 (d) A merchant power plant shall provide an assessment of its  
36 effect on the water resource and its users to the commission and  
37 the department. The assessment shall be prepared by a licensed  
38 professional geologist (as defined in IC 25-17.6-1-6.5) or an  
39 engineer licensed under IC 25-31-1. The assessment must include  
40 the following information:

- 41 (1) Sources of water supply.
- 42 (2) Total amount of water to be used by the merchant power



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plant for each source.

(3) Location of wells or points of withdrawal.

(4) Ability of the water resource to meet the needs of the merchant power plant and other users.

(5) Probable effects of the merchant power plant's use and consumption of the water resource on other users.

(6) Alternative sources of water supply.

(7) Conservation measures proposed by the merchant power plant for reducing the plant's effect on the water resource.

(8) Other information required by any other law, rule, or regulation.

**Sec. 13. Following the approval of a petition by the commission, the merchant power plant shall:**

(1) notify the commission upon becoming an affiliate of any regulated Indiana utility selling electricity at retail to Indiana consumers, at which time the commission may reassert any jurisdiction it had declined under IC 8-1-2.5;

(2) obtain prior commission approval with respect to the sale of any electricity to any affiliated regulated Indiana retail utility, or any affiliate of a regulated Indiana retail utility; and

(3) obtain prior commission approval of any transfers of ownership of the facility or its assets.

**SECTION 7. [EFFECTIVE JULY 1, 2001] (a) As used in this SECTION, "committee" refers to the utility worker skills and standards committee established by IC 8-1-8.3-3, as added by this act.**

**(b) Notwithstanding IC 8-1-8.3-4(a), as added by this act, before September 1, 2001, the governor shall make the initial appointments to the committee as follows:**

(1) The members appointed under IC 8-1-8.3-3(2)(A), IC 8-1-8.3-3(2)(B), IC 8-1-8.3-3(2)(C), IC 8-1-8.3-3(3)(A), IC 8-1-8.3-3(3)(B), and IC 8-1-8.3-3(3)(C), all as added by this act, for a term of four (4) years.

(2) The members appointed under IC 8-1-8.3-3(2)(D), IC 8-1-8.3-3(2)(E), IC 8-1-8.3-3(3)(D), and IC 8-1-8.3-3(3)(E), all as added by this act, for a term of three (3) years.

**(c) The committee shall adopt the initial rules required by IC 8-1-8.3-5, as added by this act, not later than January 1, 2003.**

**(d) This SECTION expires July 1, 2003.**

**SECTION 8. IC 13-18-4-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**





1 UPON PASSAGE]: Sec. 9. A lift station that will be used as part of  
 2 a sanitary sewer system may not be constructed within one  
 3 thousand (1,000) feet of a body of water that is inhabited by  
 4 aquatic life if the body of water is within:  
 5 (1) one thousand (1,000) feet of another body of water that is  
 6 inhabited by aquatic life; and  
 7 (2) one thousand five hundred (1,500) feet of the White River.  
 8 SECTION 9. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 317, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 317 as introduced.)

GARTON, Chairperson

Committee Vote: Yeas 8, Nays 0.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures, to which was referred Senate Bill 317, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-2-36.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 36.2. (a) As used in this section, "meter base" refers to the unit to which:**

- (1) a meter; or**
- (2) another device used to measure electricity supplied by a utility;**

**is attached at the time the meter or device is installed.**

**(b) As used in this section, "utility" refers to a public or municipally owned electric utility. The term includes a corporation formed under IC 8-1-13 to make electric energy available to inhabitants of rural areas of Indiana.**

**(c) When a new customer of a utility installs electric service, or an existing customer of the utility upgrades the customer's electric service, the utility must supply the customer with a meter base if the meter base:**

- (1) is necessary for the installation or upgrade; and**
- (2) has not already been supplied by the customer.**

**A utility may not require a customer, or a contractor or subcontractor hired by the customer, to purchase or otherwise acquire a meter base from an outside supplier or vendor.**

SECTION 2. IC 8-1-2-83 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 83. (a) ~~No~~ This section does not apply to:**

- (1) a corporation organized or operating under IC 8-1-13; or**
- (2) A corporation organized under IC 23-17, some of the members of which are local district corporations (as defined in IC 8-1-13-23).**

**(b) As used in this section, "control" means the power to direct the management and policies of a public utility, utility company, or holding company through:**

- (1) the ownership of voting securities or stock;**
- (2) the terms of a contract; or**
- (3) other means.**

**The term does not include power from holding an official position**

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or corporate office with the public utility, utility company, or holding company. Control is presumed to exist if a person, directly or indirectly, owns, controls, has the power to vote, or has the power to vote proxies that constitute at least twenty percent (20%) of the total voting power of the public utility, utility company, or holding company.

(c) As used in this section, unless otherwise indicated, "holding company" means a company that has control over one (1) or more:

- (1) public utilities; or
- (2) utility companies.

(d) As used in this section, "person" means an individual, a firm, a corporation, a company, a partnership, a limited liability company, an association, a trustee, a lessee, or a receiver.

(e) As used in this section, "reorganization" means a transaction that, regardless of the means by which it is accomplished, results in:

- (1) a change in the ownership of a majority of the voting capital stock of a public utility;
- (2) a change in the ownership or control of an entity that owns or controls a majority of the voting capital stock of a public utility;
- (3) the merger of two (2) public utilities; or
- (4) the acquisition by one (1) public utility of substantially all assets of another public utility.

(f) As used in this section, "utility company" has the same meaning as the definition of public utility under section 1 of this chapter, except that a utility company owns, operates, manages, or controls a plant or equipment located outside Indiana.

(g) A public utility, as defined in section 1 of this chapter, ~~shall~~ **may** not do any of the following without the approval of the commission after hearing:

- (1) Sell, assign, transfer, lease, or encumber its **stock**, franchise, works, or system to any other person, partnership, limited liability company, or corporation. ~~or~~
- (2) Contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation. ~~without the approval of the commission after hearing.~~  
~~And no such~~
- (3) **Contract for or effect a reorganization of the public utility.**
- (4) **Acquire control, directly or indirectly, of a public utility, utility company, or holding company.**

(h) A person may not acquire control, directly or indirectly, of

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**a public utility or the holding company of a public utility without the approval of the commission after a hearing.**

**(i) A holding company that controls at least one (1) public utility may not acquire control of a utility company without the approval of the commission after a hearing.**

**(j)** A public utility, except temporarily or in case of emergency and for a period of not exceeding thirty (30) days, ~~shall~~ **may not** make any special contract at rates other than those prescribed in its schedule of rates theretofore filed with the commission, and in force, with any other utility for rendering any service to or procuring any service from such other utility; without the approval of the commission. It shall be lawful, however, for any utility to make a contract for service to or from another utility at rates previously filed with and approved by the commission and in force.

~~(b)~~ **(k)** The approval of the commission of the sale, assignment, transfer, lease, or encumbrance of a franchise or any part thereof under this section shall not revive or validate any lapsed or invalid franchise, or enlarge or add to the powers and privileges contained in the grant of any franchise or waive any forfeiture. No such public utility shall directly or indirectly purchase, acquire, or become the owner of any of the property, stock, or bonds of any other public utility authorized to engage or engaged in the same or a similar business, or operating or purporting to operate under a franchise from the same or any other municipality or under an indeterminate permit unless authorized so to do by the commission.

~~(c)~~ **(l)** Nothing contained in this section shall prevent the holding of stock lawfully acquired before May 1, 1913, or prohibit, upon the surrender or exchange of said stock pursuant to a reorganization plan, the purchase, acquisition, taking, or holding by the owner of a proportionate amount of the stock of any new corporation organized to take over at foreclosure or other sale, the property of the corporation whose stock has been thus surrendered or exchanged.

~~(d)~~ **(m)** Every contract by any public utility for the purchase, acquisition, assignment, or transfer to it of any of the stock of any other public utility by or through any person, partnership, limited liability company, or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such stock upon the books of the corporation pursuant to any such contract shall be effective for any purpose."

Page 2, delete lines 41 through 42, begin a new paragraph and insert:

"SECTION 2. IC 8-1-2.6-4 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A regulatory flexibility committee is established to monitor competition in the telephone industry.

(b) The committee is composed of the **following**:

- (1) The members of the a house commerce standing committee and the selected by the speaker of the house of representatives.**
- (2) The members of a senate commerce standing committee selected by the president pro tempore of the senate.**
- (3) An additional member of the house of representatives, if selected by the speaker under subsection (d)(2) to be co-chair of the regulatory flexibility committee.**
- (4) An additional member of the senate, if selected by the president pro tempore under subsection (e)(2) to be co-chair of the regulatory flexibility committee.**

**(c) In selecting standing committees under this subsection, the speaker and president pro tempore shall determine which standing committee of the house of representatives and the senate, respectively, has subject matter jurisdiction that most closely relates to the electricity, gas, energy policy, and telecommunications jurisdiction of the regulatory flexibility committee.**

**(d) The chairman of each of those committees speaker of the house of representatives shall appoint:**

- (1) a member of the standing committee selected by the speaker under subsection (b); or**
- (2) a member of the house of representatives who is not a member of the standing committee selected by the speaker under subsection (b);**

**to be co-chair of the regulatory flexibility committee.**

**(e) The president pro tempore of the senate shall appoint:**

- (1) a member of the standing committee selected by the president pro tempore under subsection (b); or**
- (2) a member of the senate who is not a member of the standing committee selected by the president pro tempore under subsection (b);**

**to be co-chair of the regulatory flexibility committee.**

~~(e)~~ **(f)** The commission shall by July 1 1993, and of each year thereafter, prepare for presentation to the regulatory flexibility committee an analysis of the effects of competition on universal service and on pricing of all telephone services under the jurisdiction of the commission.

~~(d)~~ **(g)** In addition to reviewing the commission report prepared

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under subsection ~~(c)~~; **(f)**, the regulatory flexibility committee shall also issue a report and recommendations to the legislative council by November 1 ~~1993~~, and of each year. ~~thereafter that is~~ **The report and review must be** based on a review of the following issues:

- (1) The effects of competition in the telephone industry and impact of competition on available subsidies used to maintain universal service.
- (2) The status of modernization of the public telephone network in Indiana and the incentives required to further enhance this infrastructure.
- (3) The effects on economic development and educational opportunities of this modernization.
- (4) The current method of regulating telephone companies and the method's effectiveness.
- (5) The economic and social effectiveness of current telephone service pricing.
- (6) All other telecommunications issues the committee deems appropriate.

~~(c)~~ **(h)** The regulatory flexibility committee shall meet on the call of the co-chairmen to study telecommunications issues described in subsection ~~(d)~~; **(g)**. The committee shall, with the approval of the commission, retain the independent consultants the committee considers appropriate to assist the committee in the review and study. The expenses for the consultants shall be paid by the commission."

Delete page 3.

Page 4, delete lines 1 through 2, begin a new paragraph and insert:  
"SECTION 3. IC 8-1-8.3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

**Chapter 8.3. Utility Worker Skills and Standards Committee**

**Sec. 1. As used in this chapter, "committee" refers to the utility worker skills and standards committee established by section 3 of this chapter.**

**Sec. 2. As used in this chapter, "utility" means a plant or equipment within Indiana that is used for the production, transmission, delivery, or furnishing of electricity, either directly or indirectly, to the public.**

**Sec. 3. There is established the utility worker skills and standards committee consisting of the following eleven (11) members:**

- (1) The utility consumer counselor, who is an ex officio member of the committee. Except as provided in section 5 of**



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this chapter, the utility consumer counselor is a nonvoting member of the committee. The utility consumer counselor shall serve as chair of the committee.

(2) Five (5) members appointed by the governor, with one (1) member representing each of the following:

(A) A public utility (as defined in IC 8-1-2-1) that produces, transmits, delivers, or furnishes electricity, either directly or indirectly, to the public.

(B) A rural electric membership corporation formed under IC 8-1-13.

(C) A municipally owned utility (as defined in IC 8-1-2-1) that produces, transmits, delivers, or furnishes electricity, either directly or indirectly, to the public.

(D) A public utility described in clause (A) that has withdrawn from the commission's jurisdiction under any provision of Indiana law, or over which the commission has declined to exercise jurisdiction under any provision of Indiana law.

(E) A nonutility owned electric generation and transmission company.

(3) Five (5) members appointed by the governor, with one (1) member representing each of the following employee organizations:

(A) The Indiana State AFL-CIO.

(B) The Indiana State Building Trades Council.

(C) The International Brotherhood of Electrical Workers.

(D) The American Federation of State, County, and Municipal Employees.

(E) The United Steelworkers of America.

Sec. 4. (a) A member appointed under section 3(2) or 3(3) of this chapter serves for a term of four (4) years, except when a member is appointed to fill a vacancy, in which case the appointment is for the unexpired term only. A member appointed under section 3(2) or 3(3) of this chapter serves until the member's successor is appointed and qualified. However, a member appointed under section 3(2) or 3(3) of this chapter may be reappointed to successive terms. The utility consumer counselor serves on the committee for the duration of the counselor's appointment under IC 8-1-1.1-3.

(b) A member appointed under section 3(2) or 3(3) of this chapter may be removed at any time by the governor for cause.

(c) Six (6) members of the committee constitute a quorum.



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(d) The chair shall call the number of meetings necessary for the committee to adopt the initial rules required under section 5 of this chapter. After the committee adopts the initial rules required under section 5 of this chapter, the committee shall meet at least one (1) time each calendar year to review the effectiveness of the rules and consider whether any additions or amendments to the rules are needed. Upon the call of the chair or a simple majority of the members of the committee, the committee shall hold any additional meetings necessary to amend the rules.

**Sec. 5.** The committee shall adopt rules under IC 4-22-2 to establish skill and training standards for employees who operate or maintain utilities. The rules adopted must specify training standards and qualifications for utility employees who operate, maintain, service, and repair any or all parts of electric generation and transmission facilities, materials, or equipment. All standards and qualifications must be approved by a vote of a simple majority of the voting members of the committee. Any proposed standards or qualifications not agreed to by a simple majority of the voting members of the committee must be submitted to the utility consumer counselor, who, as chair of the committee, shall make a final determination concerning the proposed standards or qualifications. The chair shall either approve or deny the proposed standards or qualifications based on:

(1) information submitted by committee members appointed under section 3(2) of this chapter; or

(2) information submitted by committee members appointed under section 3(3) of this chapter;

or on information submitted by a combination of committee members appointed under section 3(2) and 3(3) of this chapter. However, the chair may not create any new standards or qualifications or approve any standards or qualifications that were not proposed by members appointed under section 3(2) or 3(3) of this chapter.

SECTION 4. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 8.4. Merchant Power Plants**

**Sec. 1.** (a) "Merchant power plant" means a facility within Indiana used for the:

(1) production, transmission, delivery, or furnishing of heat, light, or power; and

(2) sale of electric energy exclusively on the wholesale market;



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to other public utilities, energy service providers, or power marketers within or outside Indiana.

(b) The term includes a facility that has made a significant alteration to the labor used to construct or remodel the facility. For purposes of this subsection, a facility makes a significant alteration in the labor used to construct or remodel a facility if the person uses contractors, subcontractors, or work crews that include workers who are not participants in or have not completed a jointly administered labor and management apprenticeship program approved by the United States Department of Labor's Bureau of Apprenticeship Training.

(c) The term does not include a facility that is owned, controlled, or operated by a person that is obligated contractually to provide substantially all of the wholesale power requirements of an electricity supplier under a contract extending at least five (5) years.

**Sec. 2. (a)** A merchant power plant is subject to the jurisdiction of the commission.

(b) This subsection does not apply to a merchant power plant described in section 1(b) of this chapter. The commission may decline to exercise in whole or in part its jurisdiction over a merchant power plant described in section 1(a) of this chapter that has filed an application with the commission before March 1, 2001.

**Sec. 3.** The commission shall consider the following when acting upon any petition by a merchant power plant under IC 8-1-8.5 or IC 8-1-2.5:

- (1) Location.
- (2) Need.
- (3) Financing.
- (4) Reporting requirements.
- (5) Effect on electric suppliers and customers.

**Sec. 4.** When considering whether to approve a merchant power plant, the commission shall give preference to the following locations for siting:

- (1) Brownfield sites that are isolated from populated areas.
- (2) Sites of existing or former utilities that can be replaced or repowered.
- (3) Other sites identified for power plant or heavy industrial development in local land use plans before the initiation of site selection for the facility.

**Sec. 5.** Following the approval of a petition by the commission, the merchant power plant shall:



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- (1) notify the commission upon becoming an affiliate of any regulated Indiana utility selling electricity at retail to Indiana consumers, at which time the commission may reassert any jurisdiction it had declined under IC 8-1-2.5;
- (2) obtain prior commission approval with respect to the sale of any electricity to any affiliated regulated Indiana retail utility, or any affiliate of a regulated Indiana retail utility; and
- (3) obtain prior commission approval of any transfers of ownership of the facility or its assets.

SECTION 5. [EFFECTIVE JULY 1, 2001] (a) As used in this SECTION, "committee" refers to the utility worker skills and standards committee established by IC 8-1-8.3-3, as added by this act.

(b) Notwithstanding IC 8-1-8.3-4(a), as added by this act, before September 1, 2001, the governor shall make the initial appointments to the committee as follows:

- (1) The members appointed under IC 8-1-8.3-3(2)(A), IC 8-1-8.3-3(2)(B), IC 8-1-8.3-3(2)(C), IC 8-1-8.3-3(3)(A), IC 8-1-8.3-3(3)(B), and IC 8-1-8.3-3(3)(C), all as added by this act, for a term of four (4) years.
- (2) The members appointed under IC 8-1-8.3-3(2)(D), IC 8-1-8.3-3(2)(E), IC 8-1-8.3-3(3)(D), and IC 8-1-8.3-3(3)(E), all as added by this act, for a term of three (3) years.

(c) The committee shall adopt the initial rules required by IC 8-1-8.3-5, as added by this act, not later than January 1, 2003.

(d) This SECTION expires July 1, 2003."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 317 as printed January 31, 2001.)

MOSES, Chair

Committee Vote: yeas 6, nays 1.



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## HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 317 be amended to read as follows:

Page 4, between lines 1 and 2, begin a new paragraph and insert:

**"(l) The commission shall issue an order within one hundred fifty (150) days after a petition seeking approval under this section is filed. If the commission fails to issue an order within one hundred fifty (150) days after the petition is filed, the petition is considered approved."**

Page 4, line 2, delete "(l)" and insert **"(m)"**.

Page 4, line 9, delete "(m)" and insert **"(n)"**.

Page 9, between lines 24 and 25, begin a new paragraph and insert:

**"Sec. 1. This chapter does not apply to a merchant power plant that has filed a petition with the commission under IC 8-1-2.5 before March 1, 2001, seeking an order that the commission decline to exercise, in whole or in part, its jurisdiction over the merchant power plant."**

Page 9, line 25, delete "1." and insert **"2."**

Page 10, line 4, delete "2. (a) A" and insert **"3. Except as provided in section 1 of this chapter, a"**.

Page 10, delete lines 6 through 10.

Page 10, line 11, delete "3." and insert **"4."**

Page 10, delete line 18, begin a new line block indented and insert:

**"(5) Impact on electric, water, and natural gas suppliers and customers.**

**(6) The recommendation of the department of natural resources under section 5 of this chapter.**

**(b) The commission shall issue a decision either approving or denying a merchant power plant's petition under IC 8-1-2.5 or IC 8-1-8.5 not later than eighteen (18) months after the date of the petition.**

**Sec. 5. (a) When petitioning the commission under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant must establish proof of financial responsibility by filing one (1) or a combination of the following with the commission:**

- (1) A fully funded trust fund agreement.**
- (2) A surety bond with a standby trust fund agreement.**
- (3) A letter of credit with a standby trust fund agreement.**
- (4) An insurance policy with a standby trust fund agreement.**
- (5) Proof that the merchant power plant meets a financial test established by the commission and equivalent to one (1) of the items in subdivisions (1) through (4).**



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(b) The amount of financial responsibility that a merchant power plant must establish under this section shall be determined by the commission. In all cases, the amount must be sufficient to close the merchant power plant in a manner that:

- (1) minimizes the need for further maintenance and remediation; and
- (2) provides reasonable, foreseeable, and necessary maintenance and remediation after closure for at least twenty (20) years after the merchant power plant ceases operations.

(c) The commission may use:

- (1) a trust fund agreement;
- (2) a surety bond;
- (3) a letter of credit;
- (4) an insurance policy; or
- (5) other proof of financial responsibility;

filed under this section for the closure or post-closure monitoring, maintenance, or remediation of a merchant power plant approved by the commission, if the merchant power plant does not comply with closure or post-closure standards established by the commission under subsection (d).

(d) The commission shall adopt rules under IC 4-22-2 to establish the following:

- (1) Standards for the proper closure and post-closure monitoring, maintenance, and remediation of merchant power plants.
- (2) Criteria for how money in a trust fund agreement, a surety bond, a letter of credit, an insurance policy, or other proof of financial responsibility provided by a merchant power plant may be released to the merchant power plant when the merchant power plant meets the closure and post-closure standards established under subdivision (1).

Sec. 6. (a) Not later than seven (7) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall:

- (1) send notice of the petition, including a description of the facility or proposed facility, by United States mail to all record owners of real property located within one (1) mile of the proposed facility; and
- (2) cause notice of the petition, including a description of the facility or proposed facility, to be published in a newspaper of general circulation in each county in which the facility or proposed facility is or will be located.

(b) The notice of the petition shall include:

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- (1) a description of the facility or proposed facility; and
- (2) the location, date, and time of the field hearing required by section 7 of this chapter.

**Sec. 7.** Not later than thirty (30) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall conduct a field hearing at a location in a county in which the facility or proposed facility is or will be located. The purpose of the field hearing is to determine local support for the merchant power plant.

**Sec. 8.** Not later than thirty (30) days after the field hearing required by section 7 of this chapter, a majority of the persons described in section 4(a)(1) of this chapter may request in writing a hearing before the commission.

**Sec. 9. (a)** Not later than thirty (30) days after a hearing is requested under section 8 of this chapter, the commission shall conduct a hearing at a location in a county in which the facility or proposed facility is or will be located. The hearing required by this subsection must be held:

- (1) before or at the same time as the hearing required under IC 8-1-8.5-5(b); and
- (2) before the commission issues a certificate of public convenience and necessity under IC 8-1-8.5.

**(b)** At least ten (10) days before the scheduled hearing, notice of the hearing must be served by first class mail on:

- (1) all record owners of property located within one-half (1/2) mile of the proposed facility; and
- (2) the merchant power plant.

**(c)** The parties to the hearing include:

- (1) a person entitled to notice under section 9(b)(1) of this chapter; and
- (2) the merchant power plant.

**(d)** The commission shall accept written or oral testimony from any person who appears at the public hearing, but the right to call and examine witnesses is reserved for the parties to the hearing.

**(e)** The commission shall make a record of the hearing and all testimony received. The commission shall make the record available for public inspection.

**Sec. 10.** Not later than forty-five (45) days after a hearing is conducted under section 9 of this chapter, the commission shall issue written findings based on the testimony presented at the hearing. To the extent the commission's findings differ from testimony presented at the hearing, the commission must explain



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its findings."

Page 10, line 19, delete "4." and insert "11."

Page 10, between lines 27 and 28, begin a new paragraph and insert:

**"Sec. 12. (a) For purposes of this section:**

**(1) "department" refers to the department of natural resources; and**

**(2) "water resource" has the meaning set forth in IC 14-25-7-8.**

**(b) When considering whether to approve a merchant power plant, the commission shall obtain a recommendation from the department regarding the merchant power plant's planned use of and its potential effect on the water resource.**

**(c) To make its recommendation, the department may do the following:**

**(1) Rely on the merchant power plant's water resource assessment under subsection (d).**

**(2) Consult with and advise users of the water resource.**

**(3) Enter upon any land or water in Indiana to evaluate the effect of the merchant power plant on the water resource.**

**(4) Conduct studies to evaluate the availability and most practical method of withdrawal, development, conservation, and use of the water resource.**

**(5) Require metering or other reasonable measuring of water withdrawals and reporting of the measurement to the department.**

**(6) Engage in any other activity necessary to carry out the purposes of this section.**

**(d) A merchant power plant shall provide an assessment of its effect on the water resource and its users to the commission and the department. The assessment shall be prepared by a licensed professional geologist (as defined in IC 25-17.6-1-6.5) or an engineer licensed under IC 25-31-1. The assessment must include the following information:**

**(1) Sources of water supply.**

**(2) Total amount of water to be used by the merchant power plant for each source.**

**(3) Location of wells or points of withdrawal.**

**(4) Ability of the water resource to meet the needs of the merchant power plant and other users.**

**(5) Probable effects of the merchant power plant's use and consumption of the water resource on other users.**

**(6) Alternative sources of water supply.**

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**(7) Conservation measures proposed by the merchant power plant for reducing the plant's effect on the water resource.**

**(8) Other information required by any other law, rule, or regulation."**

Page 10, line 28, delete "5." and insert "13."

(Reference is to ESB 317 as printed April 10, 2001.)

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 317 be amended to read as follows:

Page 11, after line 15 , begin a new paragraph and insert:

SECTION 9. ic 13-18-4-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 9. A lift station that will be used as part of a sanitary sewer system may not be constructed within one thousand (1,000) feet of a body of water that is inhabited by aquatic life if the body of water is within:**

**(1) one thousand (1,000) feet of another body of water that is inhabited by aquatic life; and**

**(2) one thousand five hundred (1,500) feet of the White River.**

SECTION 10. **An emergency is declared for this act.**

(Reference is to ESB 317 as printed April 9, 2001.)

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